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FROM : Oleg F. Kaplun, Esq. of Fay Kaplun & Marcin, LLP

DATE : January 10, 2007

SUBJECT : U.S. Patent Appln. Serial No. 09/736,908
for *Method and Apparatus for Generating Recommendations Based on
Consistency of Selection*
Phillips Ref.: US 000387

NUMBER OF PAGES INCLUDING COVER : 24

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Attorney Docket No. US 000387

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Kurapati
Serial No. : 09/736,908
Filed : December 14, 2000
Title : Method And Apparatus For Generating Recommendations
: Based On Consistency Of Selection
Group Art Unit : 2623
Examiner : Jason P. Salce

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By: Oleg F. Kaplun, Reg. No. 45,559	Date: January 10, 2007

TRANSMITTAL

In support of the Notice of Appeal filed on November 10, 2006, transmitted herewith please find an Appeal Brief for filing in the above-identified application. Please charge the Credit Card of **Fay Kaplun & Marcin, LLP** in the amount of \$500.00 (PTO-Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the **Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492** for any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

Dated: January 10, 2007

By: 
Oleg F. Kaplun, Reg. 45,559

Attorney Docket No. US 000387

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Kurapati
Serial No. : 09/736,908
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Respectfully submitted,

Dated: January 10, 2007

By: 
Oleg F. Kaplun, Reg. 45,559

Serial No.: 09/736,908
Group Art Unit: 2623
Attorney Docket No.: US 000 387

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)

Kaushal Kurapati)

Serial No.: 09/736,908)

Filed: December 14, 2000)

For: Method And Apparatus For Generating)
Recommendations Based On)
Consistency Of Selection)

Group Art Unit: 2623

Examiner: Jason P. Salce

**Board Of Patent Appeals And
Interferences**

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

In support of the Notice of Appeal filed November 10, 2006, and pursuant to 37 C.F.R. § 41.37, Appellant presents an appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 1-22 in the final Office Action dated August 10, 2006. The appealed claims are set forth in the attached Claims Appendix.

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1. Real Party in Interest

This application is assigned to Koninklijke Philips Electronics N.V., the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 1-22 have been rejected in the final Office Action. The final rejection of claims 1-22 is being appealed.

4. Status of Amendments

All amendments submitted by the appellant have been entered. None were submitted after the Advisory Action.

5. Summary of Claimed Subject Matter

The present invention relates to a method for recommending items using a recommending device. Specifically, the present invention as recited in claim 1 describes a method that obtains a list of one or more available items. (See Specification, p.3, lines 5-11). A recommendation score, R, for the one or more available items is also obtained. (Id., p. 7, lines 29-32). A processor is used to calculate an adjustment, A, to the recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number

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of times the item was offered. (Id., p. 9, lines 14-23). The number of times the item was offered and the number of times the item was selected by the user are stored in a memory. (Id., p. 6, lines 14-23). A combined recommendation score, C, is generated based on the recommendation score, R, and the adjustment, A. (Id., p. 9, lines 24-27). The list is displayed on a display unit, wherein the items are displayed in order based on a value of the combined recommendation score, C. (Id., p. 8, lines 2-7).

The present invention also relates to a second method for recommending items. The second method recited in claim 8 includes the step of obtaining a list of one or more available items. (Id., p. 3, lines 5-11). A recommendation score is calculated for the one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered. (Id., p. 9, lines 14-23). The number of times the item was offered and the number of times the item was selected by the user are stored in a memory. (Id., p. 6, lines 14-23). The list is displayed on a display unit, wherein the items are displayed in order based on a value of the recommendation score. (Id., p. 8, lines 2-7; Fig. 4, process 400 and step 480; Fig. 1, process 400 and set-top terminal/television 180).

The present invention also relates to a system for recommending items. The system recited in claim 11 includes a memory for storing computer readable code and a processor operatively coupled to the memory. (Id., p. 5, lines 18-33). The processor is configured to obtain a list of one or more available items and obtain a recommendation score, R, for the one or more available items. (Id., p. 7, lines 29-32). The processor calculates an adjustment, A, to the recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered. (Id., p. 9, lines 14-23). The processor generates a combined recommendation score, C, based on the

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recommendation score, R, and the adjustment, A. (Id., p. 9, lines 24-27). The processor controls a displaying of the list, wherein the items are displayed in order based on a value of the combined recommendation score, C. (Id., p. 8, lines 2-7).

The present invention also relates to a second system for recommending items. The second system recited in claim 18 includes a memory for storing computer readable code and a processor operatively coupled to the memory. (Id., p. 5, lines 18-33). The processor is configured to obtain a list of one or more available items and calculate a recommendation score for the one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered. (Id., p. 9, lines 14-23). The processor controls a displaying of the list, wherein the items are displayed in order based on a value of the recommendation score. (Id., p. 8, lines 2-7).

The present invention also relates to an article of manufacture for recommending television items. The article of manufacture recited in claim 21 includes a computer readable medium having computer readable code means embodied thereon. (Id., p. 5, lines 18-33). The computer readable program code means includes a step to obtain a list of one or more available items. (Id., p. 3, lines 5-11). The code means also includes a step to obtain a recommendation score, R, for the one or more available items. (Id., p. 7, lines 29-32). The code means also includes a step to calculate an adjustment, A, to the recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered. (Id., p. 9, lines 14-23). The code means also includes a step to generate a combined recommendation score, C, based on the recommendation score, R, and the adjustment, A. (Id., p. 9, lines 24-27). The code means also includes a step to display the list, wherein the

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items are displayed in order based on a value of the combined recommendation score, C. (Id., p. 8, lines 2-7).

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The present invention also relates to a second article of manufacture for generating a recommendation score for an item. The second article of manufacture recited in claim 22 includes a computer readable medium having computer readable code means embodied thereon. (Id., p. 5, lines 18-33). The code means includes a step to obtain a list of one or more available items. (Id., p. 3, lines 5-11). The code means also includes a step to calculate a recommendation score for the one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered. (Id., p. 9, lines 14-23). The code means also includes a step to display the list, wherein the items are displayed in order based on a value of the recommendation score. (Id., p. 8, lines 2-7).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1-22 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 5,758,257 to Hertz et al. ("Hertz") in view of U.S. Pat. No. 5,731,844 to Rauch et al. ("Rauch").

7. Argument

I. The Rejection of Claims 1-22 Under 35 U.S.C. § 103(a) as Obvious Over U.S. Pat. No. 5,758,257 to Hertz in view of U.S. Pat. No. Rauch Should Be Reversed.

A. The Examiner's Rejection

In the final Office Action, the Examiner rejected claims 1-22 under 35 U.S.C. § 103(a) as unpatentable over Hertz in view of Rauch. (See 8/10/06 Office Action, p. 2).

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Hertz describes a system for scheduling the receipt of data from a network that distributes the data to customers. (See Hertz, Abstract). The system uses an agreement matrix that characterizes the attractiveness of data, such as video programming, to each customer. From the agreement matrix, one or more virtual channels of data, customized to each customer, are determined. (Id., col. 4, lines 18-31). Customer profiles are stored in a database and represent customers' preferences. (Id., col. 25, lines 7-15). The profiles are updated by determining whether the customer has watched a predicted program. If the prediction is correct no adjustment is made. However, if the customer did not watch the program, the customer profile which has characteristics closest to those of the program actually watched, is adjusted and selected as the current profile until the next time slot is encountered. In this manner, an agreement matrix is recalculated based on the customer profiles and available programs for each time slot. (Id., col. 26, line 51 – col. 27, line 6). In particular, the agreement matrix is updated by adjusting a weight and an amount of a characteristic desired by a customer so that a prediction algorithm will output results that are consistent with the customer's actual preferences. (Id., col. 30, line 49 – col. 32, line 17).

Rauch describes a selection program that provides program information to a television. The selection program obtains, from a user, a selection of a television program from a schedule layout. (See Rauch, col. 5, lines 13-18). Each time the user designates a program, the selection program increments a program counter associated with the designated program. The selection program controls the television to arrange channel entries based on an order of use from the channel entry whose program has been designated the most number of times. (Id. at col. 6, lines 32-42). In addition, topics from which corresponding programs may be selected are

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also displayed in order “based on a total number of times that the particular topic selected by the user has been selected in the past.” (*Id.* at col. 11, line 53 – col. 12, line 20).

- B. The Cited Patents Do Not Disclose Calculating, Using a Processor of the Recommending Device, an Adjustment, A, to said Recommendation Score, R, Based on a Consistency Which is a Ratio of an Item Being Selected by a User Relative to the Number of Times the Item was Offered as Recited in Claim 1.

The Examiner concedes that Herz fails to disclose or suggest calculating an adjustment “based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered,” as recited in claim 1. (*See* 8/10/06 Office Action, p. 4). The Examiner attempts to cure this deficiency with Rauch by asserting that the ordered topic list described by Rauch inherently includes a ratio of the number of times a topic is selected and the number of times the topic is offered. (*Id.*) This assertion was maintained in the Advisory Action dated 10/10/06, in which the Examiner stated that although the topic count is not a ratio, “the ordered list of topics represent[s] a ratio.” (*See* 10/27/06 Advisory Action, p. 2).

Rauch states that the display of topics can be ordered based on a topic count that “indicates the *total* number of times that the particular topic has been selected *in the past.*” (*See* Rauch, col. 12, lines 12-15). (Emphasis added). The topic count is simply a running total of the user’s previous selections. The topic list reflects this running total and is neither expressly nor inherently indicative of a ratio of selections to offerings. The Examiner appears to base his assertion on the fact that the topic count can only be incremented whenever a topic is offered. In other words, the topic count is necessarily associated with times during which the topic is offered. Because there is some finite number of past topic offerings, and there is a topic count associated with the offerings, this constitutes a ratio. This line of reasoning leads to an untenable

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conclusion regarding the nature of the topic count. The error of this reasoning can be demonstrated by taking note of the fact that any so-called ratio can be derived by selecting an arbitrary point in time. That is, according to this reasoning, the ratio would not be limited to being between the current topic count and the current offering total. It could just as easily be a ratio of the current topic count to any previous offering total (e.g., two offerings ago). It would also be possible to form a ratio of the current topic count to a future offering total. Merely because two totals *could* be considered as a ratio does not mean that the totals do in fact constitute a ratio. Without defining what the actual ratio is, any number of arbitrary and meaningless ratios could be derived.

In addition, Rauch's selection program does not make any use of ratios. In executing a topics routine, the display of topics is reordered following the selection of a topic. (*Id.* at col. 12, lines 15-20; Fig. 7, step 706). This continuous updating of the display is dependent only on the topic count which accrues or is incremented by the selection of topics, and does not take any ratio into consideration. In other words, only selection of topics is considered in Rauch. Thus, it is unclear how the ratio allegedly disclosed by Rauch can be applied in accordance with the invention of the present application, when Rauch never even contemplates any usage of ratios.

Also, claim 1 recites, "generating, using said processor, a combined recommendation score, C, based on said recommendation score, R, and said adjustment, A." Rauch does not consider the entire ordered list of topics for ranking. That is, a combined recommendation score C is generated based on the adjustment A which is in turn based on the calculation of the adjustment A. In Rauch, recommendation is made by the most frequently selected topics being displayed first, the second most frequently selected topics being displayed

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second, and so on. (see col. 12, lines 18-20). Rauch only considers the selected topics for incrementing a topic count for generating recommendation (see col. 12, lines 18-20). The ordered list of topics has no relevance or bearing on the frequency of selected topics. Although the ordered list of topics is used as a population of topics, the actual number of total topics has no significance with respect to or effect on the frequency of selected topics. Only the selection of topics has any effect or bearing on the frequency of selected topics. Rauch does not consider the ordered list of topics in displaying the most frequently selected topics first, the second most frequently selected topics second, and so on. The frequency of selected topics alone is not a ratio. Since Rauch solely considers the frequency of selected topics for recommendation (the frequency of the selected topics not being a ratio) and the ordered list of topics does not have any involvement in this consideration, Rauch does not teach or suggest generating any kind of combined recommendation score C based on an adjustment A, where the adjustment A is calculated based on a ratio. Instead of the recommendation being based on a ratio, Rauch discloses a recommendation based solely on selected topics which are incrementally counted. Accordingly, claim 1 recites at least one element or limitation not taught or suggested by the cited references, alone or in combination. To illustrate more clearly, the Examiner points out the following example:

For example, if a user selects sports 9 times out of 10 offerings and selects romance 1 times out of 10 offerings, then sports is ranked higher than romance. Therefore, no ranking could take place without such a determination. (See 8/10/06 Final Office Action, p. 4)

Applicant respectfully disagrees. A determination of ranking can be made without the actual number of offerings being known. That is, sports clearly ranks higher than romance because sports was selected 9 times and romance was selected 1 time. Notably, regardless of whether there were 10 offerings, 100 offerings, or 500 offerings total, sports would still rank higher than

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romance based on the total count of 9 for sports and 1 for romance. Thus, Applicant submits that as illustrated, the actual number of offerings is not relevant to ranking. Only the number actually selected is relevant to ranking in the Examiner's example. Hence Rauch solely calculates a frequency of selected topics based on the number of items selected as opposed to an adjustment to a recommendation score based on a consistency which is a ratio that includes both an item being selected and the number of times the item was offered.

The Examiner points out another example as follows:

The examiner further notes that if program A is selected once out of the five times it is aired in a week and if program B is selected five out of the five times it is aired in a week, then 5 for program B is going to be ranked higher than program A and is therefore based on a ratio of the number of times the program is selected versus the number of times the program was offered. (See 10/27/06 Advisory Action, p. 3)

Applicant respectfully disagrees with the Examiner's example as the example is illusory. The Examiner randomly assumes that both programs A and B were aired 5 times in a week. However, if it is assumed that program A is aired 10 times in a week and program B is aired 100 times in a week, then the ratio of the number of times the program is selected versus the number times the program was offered is respectively 10% (1/10) for program A and 5% (5/100) for program B. Hence, in this instance, program A would be ranked higher than program B. This is contrary to the result in the Examiner's example and illustrates how a ratio calculation comparing the number of times something is selected versus the number of times something is offered differs from only an incremental counting of selected items. That is, in this example, the frequency of sports (based on an incremental count of 5 selections) is greater than the frequency of romance (based on an incremental count of only one selection) and so sports would be ranked

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higher. However, in conducting a ratio calculation of selection versus offering, sports at 5% could be ranked lower than romance at 10%.

The Examiner also asserts that the claims fail to positively recite calculating a ratio, but rather calculating an adjustment that is representative of a ratio. (See 10/27/06 Advisory Action, pp. 2-3). The Appellant respectfully disagrees with this assertion. Claim 1 recites that the adjustment score is calculated “based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered.” Here, the term “based on” is not synonymous with the term “representative of.” Substituting the term “representative of” for “based on” does not make sense when the term is prefaced by the word “calculating”, which implies a mathematical application of a subsequent term (i.e., the ratio). It is understood from the plain language of the claim that an adjustment A is calculated, and hence the calculated adjustment A is a result of the calculation or mathematical operation. In order to determine that result, a mathematical operation must be performed (i.e., calculating) on something other than the result. Since claim 1 recites “calculating....an adjustment, A...based on a consistency which is a ratio...”, it is understood that a mathematical operation is performed with respect to the ratio. Thus, it is respectfully submitted that the Examiner’s interpretation of claim 1 is inconsistent with a proper reading of the limitations recited therein.

Based on the reasons stated above, it is respectfully submitted that neither Hertz nor Rauch, either alone or in combination, disclose or suggest “calculating, using a processor of the recommending device, an adjustment, A, to said recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered,” as recited in claim 1.

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Claim 8 recites a method for recommending items, which includes the step of “calculating, using a processor, a recommendation score for said one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered.” Thus, it is respectfully submitted that claim 8 is allowable for at least the same reasons as claim 1. Because claims 9 and 10 depend from, and, therefore include the limitations of claim 8, it is respectfully submitted that these claims are also allowable.

Claims 11 and 21 recite a processor and a computer code to “calculate an adjustment, A, to said recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered.” Thus, it is respectfully submitted that claims 11 and 21 are allowable for at least the same reasons as claim 1. Because claims 12-17 depend from, and, therefore include the limitations of claim 11, it is respectfully submitted that these claims are also allowable.

Claims 18 and 22 recite a processor and a computer code to “calculate a recommendation score for said one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered.” Thus, it is respectfully submitted that claims 18 and 22 are allowable for at least the same reasons as claim 1. Because claims 19 and 20 depend from, and, therefore include the limitations of claim 18, it is respectfully submitted that these claims are also allowable.

Based on the reasons discussed above, the Appellant respectfully requests that the Board overturn the Examiner’s rejection of claims 1, 8, 11, 18, 21 and 22, and all claims depending directly or indirectly therefrom (claims 2-7, 9 and 10, 12-17, and 19 and 20).

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8. Conclusion

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For the reasons set forth above, Appellant respectfully requests that the Board reverse the final rejection of claims 1-22 by the Examiner under 35 U.S.C. § 103(a), and indicate that claims 1-22 are allowable.

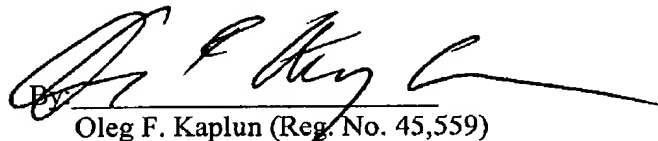
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CLAIMS APPENDIX

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1. (Rejected) A method for recommending items using a recommending device, comprising the steps of:
 - obtaining a list of one or more available items;
 - obtaining a recommendation score, R, for said one or more available items;
 - calculating, using a processor of the recommending device, an adjustment, A, to said recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered, wherein the number of times the item was offered and the number of times the item was selected by the user are stored in a memory;
 - generating, using said processor, a combined recommendation score, C, based on said recommendation score, R, and said adjustment, A; and
 - displaying said list on a display unit, wherein said items are displayed in order based on a value of said combined recommendation score, C.
2. (Rejected) The method of claim 1, wherein said list of one or more items are programs obtained from an electronic program guide.
3. (Rejected) The method of claim 1, wherein said recommendation score, R, is provided by an explicit program recommender.
4. (Rejected) The method of claim 1, wherein said recommendation score, R, is provided by an implicit program recommender.
5. (Rejected) The method of claim 1, wherein said recommendation score, R, is defined as a weighted average of individual ratings of program features.
6. (Rejected) The method of claim 1, further comprising the step of presenting said combined recommendation score, C, for each of said one or more items to a user.

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7. (Rejected) The method of claim 1, wherein said adjustment to said recommendation score, R, does not exceed a predefined value.
8. (Rejected) A method for recommending items, comprising the steps of:
 - obtaining a list of one or more available items;
 - calculating, using a processor, a recommendation score for said one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered, wherein the number of times the item was offered and the number of times the item was selected by the user are stored in a memory; and
 - displaying said list on a display unit, wherein said items are displayed in order based on a value of said recommendation score.
9. (Rejected) The method of claim 8, further comprising the step of presenting said combined recommendation score, C, for said program to a user.
10. (Rejected) The method of claim 8, wherein said list of one or more available items are programs obtained from an electronic program guide.
11. (Rejected) A system for recommending items, comprising:
 - a memory for storing computer readable code; and
 - a processor operatively coupled to said memory, said processor configured to:
 - obtain a list of one or more available items;
 - obtain a recommendation score, R, for said one or more available items;
 - calculate an adjustment, A, to said recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered;
 - generate a combined recommendation score, C, based on said recommendation score, R, and said adjustment, A; and
 - control a displaying of said list, wherein said items are displayed in order based on a value of said combined recommendation score, C.

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12. (Rejected) The system of claim 11, wherein said list of one or more items are programs obtained from an electronic program guide.
13. (Rejected) The system of claim 11, wherein said recommendation score, R, is provided by an explicit program recommender.
14. (Rejected) The system of claim 11, wherein said recommendation score, R, is provided by an implicit program recommender.
15. (Rejected) The system of claim 11, wherein said recommendation score, R, is defined as a weighted average of individual ratings of program features.
16. (Rejected) The system of claim 11, wherein said processor is further configured to present said combined recommendation score, C, for each of said one or more items to a user.
17. (Rejected) The system of claim 11, wherein said adjustment to said recommendation score, R, does not exceed a predefined value.
18. (Rejected) A system for recommending items, comprising:
 - a memory for storing computer readable code; and
 - a processor operatively coupled to said memory, said processor configured to:
 - obtain a list of one or more available items;
 - calculate a recommendation score for said one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered; and
 - control a displaying of said list, wherein said items are displayed in order based on a value of said recommendation score.
19. (Rejected) The system of claim 18, wherein said processor is further configured to present said combined recommendation score, C, for said program to a user.

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20. (Rejected) The system of claim 18, wherein said list of one or more available items are programs obtained from an electronic program guide.

21. (Rejected) An article of manufacture for recommending television items, comprising:
a computer readable medium having computer readable code means embodied thereon,
said computer readable program code means comprising:

a step to obtain a list of one or more available items;

a step to obtain a recommendation score, R, for said one or more available items;

a step to calculate an adjustment, A, to said recommendation score, R, based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered;

a step to generate a combined recommendation score, C, based on said recommendation score, R, and said adjustment, A; and

a step to display said list, wherein said items are displayed in order based on a value of said combined recommendation score, C.

22. (Rejected) An article of manufacture for generating a recommendation score for an item, comprising:

a computer readable medium having computer readable code means embodied thereon,
said computer readable program code means comprising:

a step to obtain a list of one or more available items;

a step to calculate a recommendation score for said one or more items based on a consistency which is a ratio of an item being selected by a user relative to the number of times the item was offered; and

a step to display said list, wherein said items are displayed in order based on a value of said recommendation score.

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EVIDENCE APPENDIX

No evidence has been entered or relied upon in the present appeal.

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RELATED PROCEEDING APPENDIX

No decisions have been rendered regarding the present appeal or any proceedings related thereto.

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